



Department of Municipal Licenses and Inspections

Zoning Board of Appeals

90 Pond Street – Braintree, Massachusetts 02184

Joseph C. Sullivan
Mayor

Meeting Minutes

September 30, 2008

IN ATTENDANCE: Jack Gauthier, Acting Chairman
Jay Nuss, Member
Joseph Mulligan, Member

ALSO PRESENT: Russell Forsberg, Inspector of Buildings/Code Compliance Officer
Carolyn Murray, Town Solicitor

Mr. Gauthier called the meeting to order at 7:00pm.

NEW PETITIONS:

- 1) **Petition Number 08-42**
Thomas J. O'Keefe
RE: 105 Brookside Road

Mr. Gauthier advised the Board that a letter was submitted by the applicant requesting a 60 day deferral.

The Board voted unanimously to table the petition to the November 2008 meeting.

- 2) **Petition Number 08-43**
Donald J. Price
85 St. Claire Street

Present: Donald J. Price, applicant

This is a petition filed by Donald Price of 85 St. Claire Street, Braintree, MA, regarding the same property in which Mr. Price is seeking relief from the Town of Braintree Zoning By-laws under Article 4 Sections 135-403, and Article 7, Section 135-701. Mr. Price seeks a variance to construct a twenty (20) feet wide by twenty-nine (29) feet deep single story addition to the side of the existing dwelling on a pre-existing non-conforming lot in accordance with the plans of record. The property is located in a Residential A District and contains 20,771 square feet +/- of land, as shown on Assessors Map 1107, Plot 129.

Notice

Pursuant to notice duly published in a newspaper in general circulation in the Town posted at Town Hall, and by written notice mailed to all parties of interest pursuant to G.L. Chapter 40A, a hearing was held before the Zoning Board of Appeals on September 30, 2008 at 7 p.m. at the DPW Administration Building at 90

Pond Street, Braintree, MA. Sitting on this petition was Acting Chairman, John Gauthier, and members, Joseph Mulligan and Jay Nuss.

Evidence

The petitioner, representing himself, explained to the Board that he is seeking permission to build a single story addition, measuring 29 ft. x 20 ft., to an existing dwelling to be used as a combination bedroom, handicapped-accessible bathroom and living area for the petitioner's blind and elderly mother-in-law. The petitioner's lot is pre-existing non-conforming as it contains only 20,771 square feet of land, where 1 acre is the minimum lot size. The structures on the lot also exceed the 50% maximum lot coverage allowed under the Zoning By-law. The proposed addition will encroach into the side yard setback, as the addition will be located 5 feet off the property line at its closest point, where 10 feet is the required setback.

As grounds for hardship, the petitioner noted the existence of a ledge and the topography on the opposite side of the dwelling, which would make it difficult to locate the addition on this side. This opposite side of the house is also built on slab and contains an existing drive in garage and driveway. Also, an addition on that side of the dwelling would require the construction of stairs since the addition could not be level with the first story of the existing dwelling. The petitioner stressed his desire to avoid the construct of stairs as they would further inconvenience and affect his mother-in-law's mobility. Petitioner also noted the need for special plumbing and a water pump if the addition were to be built on the slab side of the dwelling, which would create a financial hardship. The petitioner further noted that the 29 ft. x 20 ft. addition would be required to accommodate his mother-in-law. Reducing the size of the addition would narrow that mother-in-law's living space and not provide enough room for a bed, bathroom, wheelchair, walker and general living space. Finally, the petitioner noted the location of the existing structures on the lot, noting that the house is not parallel with the street and is situated away from the side of the lot with the ledge.

The Petitioner submitted a plan entitled "Plot Plan #85 St. Claire Street, Braintree, MA", dated August 5, 2008, prepared by James E. McGrath, professional Land Surveyor.

No neighbors were present at the hearing to speak in favor of the petition but Mr. Price provided letters from surrounding neighbors stating they had no objections to the construction of the addition. In particular, Ann O'Sullivan, of 95 St. Claire Street, who shares a property line with the proposed addition, said she was agreeable to the construction. The Petitioner's sister-in-law was also present and expressed her agreement and desire for the construction. No one else spoke in favor of or opposition to the petition. The Planning Board voted 4-0 in favor of the requested relief.

Findings

The Board found that the petitioner had demonstrated hardship based on the ledge and topography of the lot and the difficulty associated with the construction of an addition on the garage side of the dwelling. The Board also concluded that the addition to 85 St. Claire Street would not be substantially more detrimental to the neighborhood than the pre-existing nonconforming structure on the lot. Finally, the Board found that the requested relief could be granted without detriment to the public good and without nullifying or substantially derogating the intent and purpose of the Zoning By-law.

Decision

On motion made by Mr. Nuss and seconded, it was unanimously voted to grant the requested relief, subject to the plan presented.

3) Petition Number 08-44
Kristin & Robert Creighton
RE: 209 River Street

Present: Kristin and Robert Creighton, applicants

This is a petition filed by Kristin and Robert Creighton of 209 River Street, Braintree, MA, regarding the same property in which Petitioners are seeking relief from the Town of Braintree Zoning By-laws under Article 4 Sections 135-402 and 403 and Article 7, Section 135-701. Petitioners seek a variance to replace and expand an existing deck on a pre-existing non-conforming dwelling on a pre-existing non-conforming lot in accordance with the plans of record. The property is located in a Residential B District and contains 8,892 square feet +/- of land.

Notice

Pursuant to notice duly published in a newspaper in general circulation in the Town posted at Town Hall, and by written notice mailed to all parties of interest pursuant to G.L. Chapter 40A, a hearing was held before the Zoning Board of Appeals on September 30, 2008 at 7 p.m. at the DPW Administration Building at 90 Pond Street, Braintree, MA. Sitting on this petition was Acting Chairman, John Gauthier, and members, Joseph Mulligan and Jay Nuss.

Evidence

The Petitioners, representing themselves, explained to the Board that they are seeking permission to construct a 16 feet by 16 feet quasi L-shaped deck to the rear of the dwelling. The petitioners' lot is pre-existing non-conforming as it contains only 8,892 square feet of land, where 15,000 square feet is the minimum lot size. The lot also has an existing lot width of 97.45 feet where the required width is 100 feet. The depth of the lot is 90 feet with the requirement being 100 feet, and the existing minimum rear yard setback is 19 feet where 30 feet are required.

The proposed deck is to be located 8.1 feet from the rear of the property line, making the structure more nonconforming. The Petitioners admitted that they began the construction of the deck without obtaining a building permit and now seek permission to finish repairing and expanding the deck. The Petitioners claim the deck repairs are ninety (90) percent completed. The Petitioners relayed to the board that the old deck had collapsed and provided the board with photographs to support the dilapidated condition of the old deck. The Petitioners expressed their concern over the state of the old deck and the danger that it posed to the Petitioners' children and their pets. The Petitioners also stressed the need for the expansion of the deck by citing the proposed uses of the deck by the Petitioners' children.

The Petitioners also explained that other locations for the construction of the deck are not feasible, as there is an existing garage on the western side of the dwelling and a chimney and an already existing covered porch are located on the eastern side. The only space available for construction beside the front of the dwelling is toward the rear of the home. Since the dwelling and lot are both pre-existing and non-conforming, the Petitioners argued that the encroachment of only a few more feet would not significantly impact the lot. The Petitioners also claim that the deck can hardly be seen by any of the adjacent neighbors because the view is obstructed by trees. Moreover, the Petitioners noted that the new deck would be an improvement over the former eyesore that abutters could see in the rear.

The Petitioner submitted a plan entitled "Plan of Land Showing Proposed Deck at 209 River Street in Braintree, Mass." dated August 20, 2008, prepared by Steven P. Des Roche, of Neponset Valley Survey Assoc., Inc.

No neighbors were present at the hearing to speak in favor of the petition. All abutters were notified. The Petitioners provided a letter from Donald and Anne-Marie Kaupp, of Orlando, FL, who own the property directly behind the Petitioners' backyard at 30 BV French Street. These abutters are in agreement with the construction and of the deck and welcomed the fact that the Petitioners have undertaken these improvements since they felt that the old deck was an eyesore. Mr. and Mrs. Kaupp also are of the opinion that the Petitioners are in need of more space since the family has recently expanded. The Planning Board voted 4-0 in favor of taking no action on the petition. No one else spoke in favor of or opposition to the petition.

Findings

The Board found that the petitioners had demonstrated a hardship. Based on the shape of the lot and the location of the structures on the lot, any addition constructed to the rear of the property would encroach into the rear yard setback, as the pre-existing nonconforming dwelling encroaches into this setback. The Board also concluded that the deck repairs and expansion to 209 River Street would not be substantially more detrimental to the neighborhood than the pre-existing nonconforming structure on preexisting non-conforming lot. Finally, the Board found that the requested relief could be granted without detriment to the public good and without nullifying or substantially derogating the intent and purpose of the Zoning By-law.

Decision

On motion made by Mr. Nuss and seconded, it was unanimously voted to grant the requested relief, subject to the plan presented.

OLD BUSINESS:

On a motion made by Mr. Nuss, and seconded by Mr. Mulligan, the Board voted to approve the meeting minutes of June 24, 2008, August 12, 2008 and August 26, 2008.

The meeting adjourned at 7:45pm.